of the law grew steadily from the time he entered the School, and but a short time before he died he expressed his satisfaction that the further one went in the practice of the law, the larger faculties it called into action and the less it asked for drudgery. He leaves friends, classmates, who think of him as they do of few other men. The earnestness with which he lived for the best ends, the generosity of his interest in the public good and in the lives of his friends, his ability, his constant buoyancy, his kindness and loyalty, made all believe in his future service to the world, and made his loss to his friends a peculiarly heavy one.[1]

THE LAW SCHOOL. — The Law School opened on the first Monday in October, with an entering class somewhat smaller than that of last year. This was expected, as the new regulations as to admission went into effect this fall for the first time. Full statistics will appear in the December number.

Owing to the continued illness of Professor Williston, some changes in the curriculum have been made necessary. Professor Ames has taken charge of Contracts and Bills and Notes, and Professor Beale of Pleading. Mr. Harvey H. Baker, LL.B., 1894, is conducting the course on Partnership. Suretyship has been dropped from the list for this year. According to the announcement made last spring, Mr. Frank B. Williams, instructor in Roman Law in the College, is giving Second Year Property. It is confidently expected that Professor Williston will return during the winter, in which case he will take charge of the course on Bills and Notes for the remainder of the year.

FREE SPEECH VERSUS FAIR TRIAL. — While the notorious Durrant murder trial was pending last spring at San Francisco, a theatrical manager in that city announced the production of a play, manifestly based on the facts of the above case as they had appeared at the preliminary examination. The prospectus showed that the play was of a most sensational character, and the prisoner, claiming that the popular mind would be so inflamed as to render a fair trial impossible, demanded that its production be enjoined. The trial court accordingly issued an order to that effect. On writ of *certiorari*, the Supreme Court of California, in *Dailey* v. *Superior Court*, 44 Pac. Rep. 458, annulled the order, holding that the constitutional right of free speech must not be hampered by anything in the nature of a censorship.

The California Constitution provides that "every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." It is often stated that liberty of the press means the right to publish without previous restraint; the court being powerless with regard to writings not yet published. (Story on the Constitution, § 1885.) And the California court held that the right to produce plays at a theatre is no less extensive. Admitting that the presentation of this play might have amounted to contempt of court, and have been punishable as such, the majority of the judges felt convinced

[1] For this obituary notice the Editorial Board is indebted to Mr. Norman Hapgood, a fellow editor and classmate of Mr. Abbot.

that an order not to commit the contempt was an unheard of proceeding; that the prisoner's rights would not be jeopardized, for if the state of public feeling should render an impartial trial impossible, he would be granted a new trial.

Two judges dissented from the majority opinion, contending that the right of free speech should be limited by the constitutional power of the judiciary to insure litigants fair trials; and that while it might be going too far to enjoin the publication of an ordinary libel, a court should certainly be allowed to prevent all interference with the course of justice in a pending trial.

The argument of the dissenting judges seems to lead to the more satisfactory conclusion, and it is certainly a pity if it cannot be reconciled with the language of the Constitution. There is room for much false sentiment on the subject of free speech and other high-sounding natural rights of the freeborn citizen. No one would contend that the right of a man on trial for his life to secure justice should not rank paramount to the right of a theatrical manager to coin shekels by inflaming the popular mind against him. To compel the prisoner to go to the expense of a new trial or a change of venue is an unsatisfactory way out of the difficulty. The public interest may demand that a man shall generally be free to speak his thoughts; it certainly demands that the course of justice shall always run smooth.

THE "NEW WOMAN" IN COURT. — That a woman suing for divorce may be required to pay temporary alimony and solicitor's fees to her husband is the decision of the Circuit Court of Cook County, Illinois, in *Groth* v. *Groth*, reported in 7 Chicago Law Journal, 360. The *ratio decidendi* is, that, where changed circumstances bring a case within the reason of an old rule, the rule must be applied, though what seems a novel result is thereby attained.

It can hardly be questioned that the law administered in the Ecclesiastical Court of England, what may be called the common law of divorce, is law in this country. 1 Bishop, Mar., Div. & Sep. § 133. Temporary alimony was allowed in *North* v. *North*, 1 Barb. Ch. 241, without a statutory provision. The result then in the principal case is undoubtedly correct if the old ground for compelling the payment of alimony now exists in the woman's case as well as the man's. Bishop states as the reason for allowing it in the Ecclesiastical Court, "that the marriage has taken from the wife her property and vested it in the husband, leaving her when acting apart from or adversely to him in poverty." 2 Mar., Div. & Sep. § 922. This ground does not exist to-day in most jurisdictions, but the wife's right to temporary alimony in a proper case is too firmly established to be denied. If, then, as the court says, the wife "has been placed on an equality with her husband in respect to her personal and property rights," common fairness requires that it should be allowed to the husband too, and such a result is justifiable on the theory advanced by the court. While strict construction is the rule when a statute is in derogation of the common law, repeated legislation on a subject imbues the judges with the spirit of the change. So that ultimately, when questions come up which are not within the letter of the statutes, this effect is apparent in the manner in which they are treated. *Smart* v. *Smart*, [1892] A. C. 425, is an instance of this. At page 435 of the opinion, Lord Hobhouse does not hesitate to say that this is